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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

In re A.M., a Person Coming Under
the Juvenile Court Law.

C061479

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD227361)

Plaintiff and Respondent,

v.

S.M.,

Defendant,

D.S. et al.,

Appellants.

Appellants L.S. (the maternal great-aunt) and D.S. (the maternal great-grandmother) are relatives of the infant minor, A.M., who appeal orders of the juvenile court terminating the mother's parental rights and appointing de facto parents (Welf. & Inst. Code, §§ 366.26, 395).¹

¹ Undesignated statutory references are to the Welfare and Institutions Code.

In this pro se appeal, appellants contend: (1) relative placement should be considered as quickly as possible; (2) the administrative decision of the Sacramento County Department of Health and Human Services (DHHS) denying a criminal records exemption was erroneous; (3) the juvenile court abused its discretion in placing the minor with nonrelatives and conferring de facto parent status on the minor's caretakers; (4) DHHS deliberately delayed placing the minor in order to deprive appellants of their preferred placement status under section 361.3; and (5) various errors exist in the record. We shall dismiss the appeal.

FACTUAL BACKGROUND²

In April 2008, the minor's mother, S.M., was at a midtown Sacramento Jamba Juice with the 14-year-old maternal cousin and the two-month-old minor. The mother yelled at both of them, blew smoke in their faces, and was caught writing on the minor with a ballpoint pen. The mother said to the minor, "[T]his is what you get for kicking me so much." When the police arrived, the mother asked, "[W]hy can't I write on my baby?" She also told the police she was hearing voices and needed help.

² Appellants allege numerous errors in the record and seek to correct them through their brief. Our review is limited to the appellate record. (*People v. Blair* (2005) 36 Cal.4th 686, 756.) Appellants have not and could not identify any reasons for us to take judicial notice of their factual allegations, which we disregard.

The minor was placed in protective custody that day. Three days later, DHHS filed a dependency petition alleging jurisdiction under section 300, subdivision (b) (failure to protect).

In an April 2008 interview, the mother told a social worker she had taken the minor and the two maternal cousins to the Jamba Juice and spent money on them, but they betrayed her. She denied blowing smoke in the minor's or the maternal cousin's face. She claimed to have been playing with the minor, and denied having a history of psychiatric treatment. At a meeting with an early intervention specialist, the mother yelled and swore throughout the interview and refused to be tested for drugs. She said she did not need to drug test because, "I do not want my baby."

The maternal great-aunt requested placement of the minor, asserting the mother needed help caring for the minor due to her mental health issues. She had stayed with and assisted the mother in caring for the minor for one month after he was born, and the mother did almost nothing to care for him. The maternal great-aunt has had custody of the minor's half sibling since the girl was two days old, and adopted her in 2005. The maternal great-uncle, J.S., said the mother was bipolar and acts erratically if she does not take her medication.

The maternal grandmother's therapist, R.P., told a social worker the maternal great-aunt and great-uncle are alcoholics. She said the maternal cousin had to care for the great-aunt and

great-uncle when they are debilitated from drinking, and the maternal great-aunt made the high school-aged maternal cousin take cold showers as punishment.

According to a May 2008 report, the mother behaved very erratically during her visits with the minor and stopped visiting after the third visit in May 2008. Later, she called the foster family agency social worker to tell her she would no longer visit and would turn the minor over to the state.

At a May 2008 status conference, counsel for the minor requested the maternal great-aunt be assessed for placement. The juvenile court ordered DHHS to make the assessment and that no placement would be made without a prior court order.

In June 2008, DHHS recommended against placing the minor with the maternal great-aunt and great-uncle based on concerns of drug use. The report also noted their home was not approved by the kinship unit due to an extensive criminal history, including multiple drug convictions.

The juvenile court sustained the petition in a July 2008 dispositional and jurisdictional hearing. The minor was committed to the care of DHHS for placement. The juvenile court also set a hearing for early termination of reunification services. (See *In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1237.)

The maternal great-aunt sought administrative review of the kinship unit's decision to deny placement in her home, and DHHS

held a grievance review hearing in July 2008. The maternal great-aunt attended the hearing, but the maternal great-uncle did not. The panel upheld the denial as the maternal great-uncle did not attend the hearing, was not able to explain his extensive criminal history, and was ineligible for a criminal exemption until 2014. The maternal great-aunt told a social worker she had not been treated fairly at the hearing and would continue to file appeals until the minor is placed with biological relatives.

The maternal great-grandmother's home was approved for placement in September 2008. However, the maternal great-grandmother was considered unsuitable for placement as she was 70 years old and did not expect to be able to care for the minor until he reaches 18. The social worker thought the maternal great-grandmother was still grieving over the death of her husband, and was being pressured by her daughter, the maternal great-aunt. The social worker also found that the maternal great-grandmother realized she would need full-time help to raise the minor and would thus rely on her daughter, the maternal great-aunt.

The maternal great-uncle, J.S., was assessed and denied placement due to his long-term substance abuse and criminal record. The maternal great-aunt was denied based on background checks, poor apparent boundaries with the mother, and poor parenting regarding the minor's half sibling, whom she had adopted through a private arrangement.

In October 2008, the juvenile court terminated services, relieved counsel, and set a section 366.26 hearing. The maternal great-aunt and great-grandmother attended the hearing. The juvenile court also ordered DHHS to make a suitable confidential placement of the minor. Later that month, the minor was moved to a foster home that would provide a permanent plan of adoption, guardianship, or long-term placement.

At the March 2009 selection and implementation hearing, the juvenile court appointed the confidential caretakers de facto parents and terminated parental rights with a permanent plan of adoption. The mother did not appear, but was represented by counsel. The maternal great-aunt and great-grandmother were also present at the selection and implementation hearing.

DISCUSSION

Appellants seek review of decisions by DHHS and the juvenile court placing the minor with the de facto parents rather than with one or both of them. In support of these claims, their pro se brief alleges: DHHS improperly assessed appellants and their home; the criminal histories were not documented; prior criminal history waivers were disregarded; DHHS was prejudiced against appellants; and DHHS exhibited "[b]latant disregard for correct names, statements and context in which statements were made." We shall not address these claims because we either lack jurisdiction to consider them or appellants lack standing to raise them.

Appellants' claims can be broken down into two general categories: (1) those seeking review of DHHS's actions; and (2) claims that the juvenile court abused its discretion in terminating parental rights and placing the minor with the de facto parents. We shall address each in turn.

With regard to the first set of claims, we do not have original jurisdiction to review an administrative decision of the DHHS. DHHS's "decision not to grant an exemption for a criminal conviction is an executive one, subject to administrative review." (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1059.) The administrative grievance process is, in turn, subject to review by the juvenile court by filing a section 388 petition. (*In re Esperanza C.*, at p. 1060.) The Court of Appeal has jurisdiction only to review the juvenile court's decision. (See *ibid*; Cal. Const., art. VI, § 11, subd. (a); § 395.)

We conclude the DHHS's administrative decisions cannot be directly appealed to this court; instead any action must be first brought in the juvenile court and this court can hear an appeal only from the juvenile court's ruling. Since appellants never sought review of the grievance hearing or any other DHHS action in juvenile court, we do not have jurisdiction to hear their contentions regarding DHHS's actions.

Appellants lack standing to raise their claims regarding the juvenile court's orders terminating parental rights and appointing the de facto parents. ``In juvenile dependency

proceedings, as in civil actions generally [citation], only a party aggrieved by the judgment has standing to appeal.'" (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 837 (*Harmony B.*)). Standing to appeal is jurisdictional. (*Ibid.*) ""Whether one has standing in a particular case generally revolves around the question whether that person has rights that may suffer some injury, actual or threatened."" (Id. at p. 838.)

Standing to appeal is generally limited to the agency, the minor, a parent or guardian, or a de facto parent. (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 538.) Appellants are not parents, guardians, or custodians, and did not seek de facto parent status in a timely manner. Thus, they were "relatives, not parties." (Id. at p. 539.) They therefore generally lack standing to appeal the orders of the juvenile court in this dependency action. (Id. at pp. 539-540.)

Section 361.3 provides: "(a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." A relative, subject to this provision, "although not a party, has standing to seek appellate review of the denial of her request for placement under section 361.3." (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034 (*Cesar V.*)).

Appellants never petitioned the juvenile court for placement of the minor pursuant to section 361.3. They are not

appealing from a denial of a request for placement under section 361.3, but from the termination of parental rights pursuant to a section 366.26 hearing. At the termination hearing, the minor was placed with the de facto parents with a permanent plan of adoption.

Section 361.3 does not apply to placement for adoption at a termination hearing. Instead, placement for adoption is governed by section 366.26, subdivision (k), which overrides section 361.3 regarding placement for adoption. (*Cesar V.*, *supra*, 91 Cal.App.4th at pp. 1031-1032; *In re Sarah S.* (1996) 43 Cal.App.4th 274, 285.) "Under section 366.26, subdivision (k), a 'relative caretaker' is given priority over others regarding the order in which applications for *adoption* are processed." (*In re Sarah S.*, at p. 285.) This provision does not apply, as neither appellant was ever a caretaker of the minor. Therefore, they had no rights that were harmed by the juvenile court's decision to place the minor with the presumptive adoptive parents. Under these circumstances, appellants lack standing to contest the minor's placement and their appeal must be dismissed. (*Harmony B.*, *supra*, 125 Cal.App.4th at p. 838.)

Since we either lack jurisdiction or appellants lack standing for us to consider any of their claims, we shall dismiss the appeal.

DISPOSITION

The appeal is dismissed.

_____, BUTZ, J.

We concur:

_____, BLEASE, Acting P. J.

_____, SIMS, J.